IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 19 of 2005

MOHAN LAL
V/S
LR'S OF BALMUKUND

Mr. SP SHARMA with Mr.A.R.MEHTA, for the appellant

Date of Order : 20.1.2005

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant for good number of hours. During this entire time, learned counsel for the appellant read to me the findings of both the learned courts below on the questions of bonafide necessity, & comparative hard-ship, pleadings and the statements of plaintiff PW-1 and his son PW-2. Thereafter, the only submissions made were that in the previous notice given by the plaintiff before filing of the suit, there was no mention about the bonafide requirement of plaintiff, that plaintiff has various other premises which are on rent with the tenants, and it is not the case that plaintiff has this premises only and, therefore, this coupled with the fact that the plaintiff is already carrying on business in the shop, and his son, for whose requirement, suit has been filed, is also looking after the business of his father, and is working with him, it cannot be said that the premises are required reasonably and bonafide by the plaintiff for his son. It was also contended that, during the pendency of the suit, premises falling vacant, has not been used by the plaintiff. Then the other submission made is, that during the pendency of suit, plaintiff had expired and, therefore, business being carried on by the plaintiff has devolved on his son only and, therefore, also bonafide necessity comes to an end.

I have considered the submissions.

Suffice it to say that all aspects of the matter have been dealt with in detail by the learned lower Appellate Court, and after appreciating the evidence, findings have been recorded on the questions of reasonable bonafide necessity, so also on comparative hardship.

Learned counsel for the appellant has propounded the proposition that this court can interfere with the findings of fact , if there is misreading of evidence or non-reading of evidence. But then after propounding that proposition, only statements of plaintiff were again

read, but then nothing has been shown from the findings of learned lower Appellate Court as to what part of evidence has been misread, or what part of material has not been read. In substance, whole attempt of learned counsel for the appellant was, that I should re-appreciate the evidence, as learned trial court has come to the conclusion that plaintiff has failed to establish reasonable & bonafide necessity, so also consideration of comparative hardship.

In my view, this is not permissible as the finding of the learned Lower Appellate Court are not shown to be vitiated on any of the grounds available under Sec. 100 CPC. In that view of the matter, I do not find any force in this appeal. The same is, therefore, dismissed summarily.

However, at the request of learned counsel for the appellant, the appellant is granted time upto 31.12.2005 to vacate the premises on the condition that the defendant gives an undertaking before the learned trial court within one month from today that on or before the expiry of the above period, he will peacefully hand over the vacant possession of the suit premises to the plaintiff, and that during this period, he will not, in any manner, transfer the possession of the suit premises to anybody. Likewise, the entire decretal amount, so also all arrears of rent, if any, shall be deposited by the appellant in the trial court within one month from today, and shall further continue to deposit amount equal to the monthly rent by way of damages for use and occupation by 15th of each succeeding month, till the actual delivery of possession. In case the appellant fails to comply with any of the above conditions, the respondent will become automatically entitled to execute the decree forthwith.

( N P GUPTA ),J.

/Srawat/